

AMENDED IN SENATE JUNE 6, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2744

Introduced by Assembly Member Gordon
(Coauthor: Senator Hill)

February 19, 2016

An act to amend Section 650 of the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as amended, Gordon. Healing arts: referrals.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person. Existing law makes a violation of this provision a public offense punishable upon a first conviction by imprisonment, as specified, or a fine not exceeding \$50,000, or by imprisonment and that fine.

This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells services ~~on an Internet platform~~, *through a third-party advertiser* does not constitute a referral of ~~patients~~. *patients when the third-party advertiser does not itself recommend, endorse, or otherwise select a*

licensee. The bill would require the purchaser of the service to receive a refund of the full purchase price if the licensee determines, after consultation with the purchaser, that the service is not appropriate for the purchaser. The bill would specify that these provisions do not apply to basic health care services or essential health benefits, as defined. The bill would also provide that the entity that provides advertising is required to be able to demonstrate that the licensee consented in writing to these provisions. *The bill would require a third-party advertiser to make available for purchase services advertised by all licensees in the applicable geographic region.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 650 of the Business and Professions Code
2 is amended to read:
3 650. (a) Except as provided in Chapter 2.3 (commencing with
4 Section 1400) of Division 2 of the Health and Safety Code, the
5 offer, delivery, receipt, or acceptance by any person licensed under
6 this division or the Chiropractic Initiative Act of any rebate, refund,
7 commission, preference, patronage dividend, discount, or other
8 consideration, whether in the form of money or otherwise, as
9 compensation or inducement for referring patients, clients, or
10 customers to any person, irrespective of any membership,
11 proprietary interest, or coownership in or with any person to whom
12 these patients, clients, or customers are referred is unlawful.
13 (b) The payment or receipt of consideration for services other
14 than the referral of patients which is based on a percentage of gross
15 revenue or similar type of contractual arrangement shall not be
16 unlawful if the consideration is commensurate with the value of
17 the services furnished or with the fair rental value of any premises
18 or equipment leased or provided by the recipient to the payer.
19 (c) The offer, delivery, receipt, or acceptance of any
20 consideration between a federally qualified health center, as defined
21 in Section 1396d(l)(2)(B) of Title 42 of the United States Code,
22 and any individual or entity providing goods, items, services,
23 donations, loans, or a combination thereof to the health center
24 entity pursuant to a contract, lease, grant, loan, or other agreement,
25 if that agreement contributes to the ability of the health center

1 entity to maintain or increase the availability, or enhance the
2 quality, of services provided to a medically underserved population
3 served by the health center, shall be permitted only to the extent
4 sanctioned or permitted by federal law.

5 (d) Except as provided in Chapter 2.3 (commencing with Section
6 1400) of Division 2 of the Health and Safety Code and in Sections
7 654.1 and 654.2 of this code, it shall not be unlawful for any person
8 licensed under this division to refer a person to any laboratory,
9 pharmacy, clinic (including entities exempt from licensure pursuant
10 to Section 1206 of the Health and Safety Code), or health care
11 facility solely because the licensee has a proprietary interest or
12 coownership in the laboratory, pharmacy, clinic, or health care
13 facility, provided, however, that the licensee's return on investment
14 for that proprietary interest or coownership shall be based upon
15 the amount of the capital investment or proportional ownership of
16 the licensee which ownership interest is not based on the number
17 or value of any patients referred. Any referral excepted under this
18 section shall be unlawful if the prosecutor proves that there was
19 no valid medical need for the referral.

20 (e) Except as provided in Chapter 2.3 (commencing with Section
21 1400) of Division 2 of the Health and Safety Code and in Sections
22 654.1 and 654.2 of this code, it shall not be unlawful to provide
23 nonmonetary remuneration, in the form of hardware, software, or
24 information technology and training services, as described in
25 subsections (x) and (y) of Section 1001.952 of Title 42 of the Code
26 of Federal Regulations, as amended October 4, 2007, as published
27 in the Federal Register (72 Fed. Reg. 56632 and 56644), and
28 subsequently amended versions.

29 (f) "Health care facility" means a general acute care hospital,
30 acute psychiatric hospital, skilled nursing facility, intermediate
31 care facility, and any other health facility licensed by the State
32 Department of Public Health under Chapter 2 (commencing with
33 Section 1250) of Division 2 of the Health and Safety Code.

34 (g) The payment or receipt of consideration for advertising,
35 wherein a licensee offers or sells services ~~on an Internet platform,~~
36 *through a third-party advertiser*, shall not constitute a referral of
37 ~~patients.~~ *patients when the third-party advertiser does not itself*
38 *recommend, endorse, or otherwise select a licensee.* To the extent
39 the licensee determines, after consultation with the purchaser of
40 the service, that the service is not appropriate for the purchaser,

1 the purchaser shall receive a refund of the full purchase price. This
2 subdivision shall not apply to basic health care services, as defined
3 in subdivision (b) of Section 1345 of the Health and Safety Code,
4 or essential health benefits, as defined in Section 1367.005 of the
5 Health and Safety Code and Section 10112.27 of the Insurance
6 Code. The entity that provides the advertising shall be able to
7 demonstrate that the licensee consented in writing to the
8 requirements of this subdivision. *A third-party advertiser shall*
9 *make available for purchase services advertised by all licensees*
10 *in the applicable geographic region.*

11 (h) A violation of this section is a public offense and is
12 punishable upon a first conviction by imprisonment in a county
13 jail for not more than one year, or by imprisonment pursuant to
14 subdivision (h) of Section 1170 of the Penal Code, or by a fine not
15 exceeding fifty thousand dollars (\$50,000), or by both that
16 imprisonment and fine. A second or subsequent conviction is
17 punishable by imprisonment pursuant to subdivision (h) of Section
18 1170 of the Penal Code, or by that imprisonment and a fine of fifty
19 thousand dollars (\$50,000).